

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CLAIMANT,

vs.

REGIONAL CENTER OF THE EAST BAY,

Service Agency.

OAH No. 2016040356

DECISION

Administrative Law Judge Regina Brown, Office of Administrative Hearings (OAH), State of California, heard this matter on May 10, 2016, in San Leandro, California.

Claimant appeared and represented herself.

Mary Dugan, Fair Hearing Specialist, represented service agency Regional Center of the East Bay (RCEB).

The record closed and the matter was submitted on May 10, 2016.<sup>1</sup>

ISSUE

Whether RCEB failed to timely implement Claimant's individual program plan and associated services after Claimant was found eligible for regional center services.

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<sup>1</sup> Claimant requested that the exhibits in this matter be sealed. With no objection by RCEB, the exhibits were sealed and placed under protective order, marked for identification as Exhibit L.

## FACTUAL FINDINGS

1. Claimant is a 38-year-old female with autism. She also suffers from auditory processing disorder and has significant visual challenges. Claimant has difficulty with communicating and social interaction. As a result, she has experienced difficulty accessing medical services. Claimant states that on several occasions, she has been escorted out of medical clinics or offices by security when she was only attempting to advocate for herself. Her condition does not impact her intellectual abilities, and she is very articulate and knowledgeable. She is pursuing a master's degree. She lives on her own in an apartment.

2. On February 8, 2016, in OAH Decision No. 2015110525, Claimant was found eligible to receive regional center services through RCEB. Claimant established that she needed help to organize her life, to lessen the humiliation she experiences in public situations, and to help navigate the medical and financial systems.

3. On February 18, 2016, Claimant sent an email to RCEB inquiring about the status of her case. RCEB responded that it had not yet received the OAH decision, but her case would be assigned to a case manager.

4. On March 1, 2016, Claimant sent an email to RCEB indicating that she had been approved for In-Home Support Services (IHSS), and requested assistance to obtain caregivers. She wanted someone from RCEB to get back to her that same day about her case management.

5. On March 3, 2016, Wendy Leo, RCEB Case Management Supervisor, received the case and assigned it to the case manager on March 4, 2016.

6. On March 7, 2016, RCEB notified Claimant that Israel Gamzo had been assigned as her case manager and he would discuss the services offered by RCEB, including support, advocacy, planning and coordinating services based on her individual

needs. That same day, Claimant's therapist called the case manager (at Claimant's request) and inquired when services for Claimant would start and to call Claimant.

7. On March 8, 2016, the case manager sent an email to Claimant to explain the process to establish services. He attempted to assure Claimant that no one in the agency was trying to "give her the runaround." The case manager scheduled an Individual Program Plan (IPP) meeting for March 22, 2016.

8. On March 22, 2016, the IPP meeting was held with Claimant. The case manager understood Claimant's goals as seeking support to access medical services and to locate alternative housing. The case manager explained to Claimant the process of case management and developing an IPP, the services that the regional center could offer and the amount of time it would require to put the services into place. He informed Claimant that they would have quarterly face-to-face meetings and he would look for an appropriate Independent Living Skills (ILS) agency to provide her with needed services. During the meeting, Claimant requested that the assigned case manager personally assist her with accessing urgent medical services. The case manager explained that regional center case managers do not perform this type of function, and an ILS agency would perform this function for her. He informed her that it would take time for the services to commence, but once an ILS agency was assigned, the process would speed up.

Because of perceived misunderstandings between the case manager and Claimant, Wendy Leo was also asked to come into the IPP meeting. Leo explained to Claimant that case managers do not provide services directly. RCEB has a service delivery model where an assessment is performed by an agency after meeting with the individual and an agency will suggest how many hours are needed. The case manager prepares a purchase of service before the agency can provide services to the consumer.

9. The case manager completed the draft IPP on April 4, 2016, and sent it to his supervisor for review. The case manager also drafted a purchase of service request for the Claimant to have an assessment performed by an ILS agency. RCEB's purchase of service policy No. 3412, regarding independent living skills program, provides, in relevant part, as follows:

ILS provides for training and skill development in all areas necessary for the consumer to live successfully in his/her own home. This training may include but is not limited to such things as finding a suitable living arrangement such as a home or apartment, . . . budgeting/ money management, [and] use of community services.

¶ . . . ¶

Case managers will discuss both ILS and SLS [Supported Living Services] as two ways to support consumers to live in their own home. The Planning Team needs to consider which service will be most effective in meeting the consumer's goals.

A needs assessment may be completed by the ILS agencies and a learning strategy developed and a preliminary timeframe for moving should be worked out before ILS services are provided. Assessments should take between four and ten hours to complete.

¶. . . ¶

A reduction in training hours is expected over time. After two years of ILS training it is expected that the majority of training has been completed and that the services provided are more for support than training. There are circumstances where the amount of hours may not decrease. At these times a careful assessment of the circumstances should be completed by the ID Team to determine what are the barriers to success and recommend a plan.

10. On April 4, 2016, the case manager contacted an ILS agency, Partners for Community Access. The director of Partners for Community Access returned his call on April 11, 2016, and stated that after reviewing the file, she believed that Claimant would need an instructor at least twice a week. The director of Partners for Community Access informed the case manager that she did not have anyone available that could meet Claimant's needs at that time.

11. On April 7, 2016, Claimant filed a fair hearing request, indicating that RCEB failed to reply to her calls and emails and implement services within 30 days of the decision establishing her eligibility for regional center services. She wrote the following to describe what she needed to resolve her complaint:

I was told by Israel Gamzo and supervisor Wendy that I seem "confused" and I have to be "patient" because their system [ ] take[s] 8-12 months before anything can start, and there is a 3-4 year waiting list for other supports I requested. I have

waited more than a year for eligibility. It is my legal right to support today.

12. On April 18, 2016, RCEB sent Claimant a copy of the IPP for her review and signature. According to Claimant, the IPP was in an unreadable format for her vision condition. She had to scan and convert it to an accessible format. Claimant found many inaccuracies in the IPP and refused to sign it. She informed the case manager of the inaccuracies. On May 1, 2016, another draft of the IPP was sent to her. According to Claimant, this second draft IPP was prepared without any input from her, again in an unreadable format, and it still contained inaccuracies. She did not sign it.

There were also several email exchanges between the parties regarding Claimant's requests for assistance with medical and dental issues. Also, an ILS agency attempted to conduct an assessment of Claimant which resulted in a disturbing interaction between the ILS agency staff member and Claimant. That agency determined that they could not meet Claimant's needs. RCEB interpreted Claimant's actions as refusing ILS services. Claimant insists that she did not refuse the ILS services and she only wanted to know the authority and qualifications of the person who was to perform the assessment before agreeing to undergo the assessment.

13. Wendy Leo testified at hearing. According to Leo, RCEB is required to have an IPP in place within 60 days of the determination of eligibility. Leo and the case manager believed that an ILS program was the most suitable resource to meet Claimant's needs to help with scheduling and accessing medical professionals in the community. The long term goal of ILS is for the consumer to learn to perform the activities independently, if possible. It did not appear that a more intensive SLS program was necessary. Both programs would require an assessment of Claimant before services could be put into place.

Leo stated that a second proposed IPP was prepared in response to Claimant's concerns about inaccuracies regarding her diagnoses in the original IPP. Also, Claimant has the right to request a different case manager at any time and to refuse to work with an ILS agency.

14. Israel Gamzo testified at hearing. He reiterated that he attempted to ascertain Claimant's needs and to describe the available services from the regional center and how the services would be provided. When reviewing her file before their initial meeting, there was no request from Claimant for an accommodation for her visual impairment. However, at the IPP meeting, he did read documents aloud to Claimant. In preparing the IPP, Gamzo relied on other documents to include the information about Claimant's diagnoses.

Gamzo sent a letter to Claimant on April 29, 2016, to clarify the issues prior to the hearing. He informed Claimant that an ILS instructor could assist her with looking for a new housing situation as had been discussed at the IPP meeting. Also, he stated that he could pursue other ILS agencies to provide services to meet her needs and he wanted to work together to remove any information from the IPP that was inaccurate.

15. Claimant testified at hearing. She states that her condition makes it difficult for her to communicate and it can sometimes mistakenly appear similar to a psychotic episode when she is not speaking. This has made it very difficult for her to access medical services. Therefore, her sole purpose in seeking RCEB services was for a case manager to assist her with navigating the medical system.

Claimant has been frustrated with RCEB. She feels that her requests for help have not been handled in a timely fashion. Furthermore, her difficulty in communicating with the case manager has complicated matters. She feels that the case manager should be an advocate for her regarding her medical issues. Claimant believes that she was deprived of the opportunity to express this as her key goal because the case manager

insisted that this was her second goal. Also, during the IPP meeting, according to Claimant, Leo spoke very loud to her in a humiliating fashion, and the supervisor and case manager “engaged in stage whispering like [she] was invisible.” Claimant acknowledges that she was told that the case managers do not perform the services themselves, which is different from how it was done in the state where she moved from in 2015. She was also informed that after an assessment is performed by an agency, a report must be generated and it can take several months before services are implemented.

Claimant received the initial IPP and had to scan and convert it to an accessible format. It contained inaccurate diagnoses. When she received the revised IPP (again unreadable and without any input from her), it contained the same inaccurate diagnoses. According to Claimant, she requested the changes because if the IPP was sent to prospective ILS agencies they may not want to work with her because they will think that she is “psycho.” As of the hearing, Claimant had still not received a response from RCEB regarding the corrections to the IPP.

Claimant would like the following: (1) to have all written communications sent to her in a digitally accessible format, like optical character recognition (OCR) software; (2) to have all communications sent via email; (3) to fulfill her sole request for service coordination performed by a person in a regulated profession, preferably someone trained to deal with individuals with social pragmatic disorders and communication differences; (4) to provide her with very specific response times to her requests, so that she knows what to expect; and (5) to be assigned a new case manager.

16. At the conclusion of the hearing, the RCEB representative stated that they want to work with Claimant and provide her with services to help her navigate the health care system. RCEB insists that they have made diligent efforts, and are motivated to help Claimant. RCEB views this as a lifetime relationship between Claimant and RCEB



staff. They are committed to a fresh start and want to engage in brainstorming to find the right person with the proper qualifications (whether an ILS agency or some other resource) within the limits of the Lanterman Act. RCEB is open to reassigning a new case manager and supervisor to Claimant's case, and sought to reassure Claimant that this change would not delay implementation of the IPP.

## LEGAL CONCLUSIONS

1. In the Lanterman Developmental Disabilities Services Act (Lanterman Act), the Legislature has created a comprehensive scheme to provide "a pattern of facilities and services . . . sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life." (Welf. & Inst. Code, § 4501.)<sup>2</sup> The purposes of the scheme are twofold: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4685); and, (2) to enable developmentally disabled persons to approximate the pattern of living of nondisabled persons of the same age and to lead more independent and productive lives in the community." (§§ 4501, 4750; see generally *Association for Retarded Citizens v. Dept. of Developmental Services* (1985) 38 Cal.3d 384, 388.)

2. In order to determine how an individual consumer is to be served, regional centers are directed to conduct a planning process which results in an IPP for the client. The IPP is developed by an interdisciplinary team and includes participation by the consumer and/or his or her representative. (§ 4646, subds. (b) & (d).) The IPP states the consumer's goals and objectives and delineates the services and supports the consumer needs in order to achieve the goals set forth in the Lanterman Act. (§§ 4646, 4646.5, and

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code.

4648.) Among other things, the planning process for developing an IPP includes gathering information (§ 4646.5, subd. (a)(1)), developing a statement of goals, based on the needs, preferences and life choices of the consumer, and developing a statement of specific time objectives for implementing the person's goals and addressing his or her needs. (§ 4646.5, subd. (a)(2).) Thereafter, the team is to develop a schedule of the type and amount of services to be purchased by the service agency or obtained from generic resources in order to obtain the goals and objectives of the IPP. (§ 4646.5, subd. (a)(4).) All decisions concerning the consumer's goals, objectives, and services and supports that will be included in the IPP and purchased by the service agency or obtained from generic agencies are to be made by agreement of the regional center representative and the consumer or the consumer's representative. (§ 4646, subd. (d).) The service coordinator or case manager is the person responsible for preparing, overseeing, monitoring, and implementing the IPP. (§ 4647, subds. (a) & (b).)

3. It has not been established that RCEB violated the Lanterman Act by failing to timely implement the IPP and associated services after Claimant was found eligible for regional center services. Her case was assigned to a case manager within 30 days of eligibility. An IPP meeting was convened within three weeks after that. Even before the draft IPP was sent to Claimant, she filed her fair hearing request. In any event, the draft IPP was sent to Claimant within 30 days of the IPP meeting. It was not established that the case manager failed to perform any duties he had in preparing and attempting to implement the IPP, including his attempts to have an ILS agency perform an assessment. While there may be errors in the IPP, these errors can be fixed and an ILS agency can commence services as soon as reasonably possible after an assessment, report, and purchase of service is put into place. RCEB is not responsible for any delays in the assessment process caused by Claimant's conduct. However, given the

miscommunications and strained relationship, a fresh start with a new RCEB case manager and supervisor seems appropriate.

To this end, RCEB is encouraged to reassign a new case manager and supervisor and immediately convene a meeting of the planning team to consider the goals of the IPP, and whether there exist appropriate services or supports for Claimant that may be provided under the Lanterman Act. Furthermore, it is important that communications between the parties be in an accessible format for Claimant. Claimant should provide to RCEB the details of the accommodations which are necessary for communications with her, so that this can become part of her IPP. Claimant should be provided an opportunity to review the IPP for corrections. Not later than 30 days from the date of this Decision, claimant's IPP should be final and the process for implementation of the services should commence.

At hearing, Claimant sought to address additional issues not raised in the fair hearing request. For example, Claimant contended that the supervisor improperly and intentionally assigned her to a Jewish case manager because Claimant comes from a strict religious Jewish sect in another state. These issues are outside of the fair hearing request and therefore are not cognizable on appeal.

## ORDER

Claimant's appeal is denied, pursuant to Legal Conclusion 3.

DATED: May 18, 2016

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REGINA BROWN

Administrative Law Judge

Office of Administrative Hearings

## NOTICE

**This is the final administrative decision in this matter. Judicial review of this decision may be sought in a court of competent jurisdiction within ninety (90) days.**